Copyright Board of Canada

2016-17

Report on Plans and Priorities

The Honourable Navdeep Bains, P.C., M.P.
Minister of Innovation, Science and Economic Development

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Ministers' Message

As Canada begins a new chapter in 2016–17, creating a culture of innovation is more important than ever in driving economic growth.

The recent name change of our Innovation, Science and Economic Development Portfolio recognizes this, placing a deliberate emphasis both on innovation and scientific discovery, and their equal importance for economic development nationally and throughout all of Canada's diverse regions.

We have promised Canadians a government that will bring real change—in both what we do and how we do it. We will invest in growing our economy, increase transparency and use the best evidence available to inform decision making.

The Honourable Navdeep Bains

Minister of Innovation, Science and Economic Development

Through the programs of the Innovation, Science and Economic Development Portfolio, we will work to develop and deliver an innovation agenda for Canada that will help improve our productivity performance, grow the economy and enhance our prosperity and well-being.

This 2016-17 Report on Plans and Priorities of the Copyright Board of Canada provides information o· how the Board will support the Government on achieving our agenda in the coming year and we are fully confident that the Copyright Board of Canada is prepared to successfully support us and work with our partners inside and outside government to deliver for Canadians. However, given our commitment to more effective reporting, this year's report will be the final submission using the existing reporting framework.

The Honourable Kirsty Duncan

Minister of Science

The Prime Minister and the President of the Treasury Board are working to develop new, simplified and more effective reporting processes that will better allow Parliament and Canadians to monitor our Government's progress on delivering real change to Canadians. In the future, the Copyright Board of Canada's reports to Parliament will focus more transparently on how we are using our resources to fulfill our commitments and achieve results for Canadians.

The Honourable Bardish Chagger

Minister of Small Business and Tourism

These new reporting mechanisms will allow Canadians to more easily follow our Department's progress towards delivering on our priorities, which were outlined in the Prime Minister's mandate letters to us.i

It is our pleasure to present the Report on Plans and Priorities for the Copyright Board of Canada for 2016–17, which sets out how the department's work will contribute to attaining these shared objectives.

The Honourable Navdeep Bains	The Honourable Kirsty Duncan	The Honourable Bardish Chagger
Minister of Innovation, Science and Economic Development	Minister of Science	Minister of Small Business and Tourism
Mandate Letter[ii]	Mandate Letter[iii]	Mandate Letter[iv]

Section I: Organizational Expenditure Overview

Organizational Profile

Minister of Innovation, Science and Economic Development:
The Honourable Navdeep Bains, P.C., M.P.

Deputy Head:
Claude Majeau, Vice-Chairman and CEO

Ministerial portfolio:
Innovation, Science and Economic Development

Year established: 1989

Main legislative authority: *Copyright Act*[v]

Organizational Context

Raison d'être

The Copyright Board of Canada (the Board) is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society. The Board also has the right to supervise agreements between users and licensing bodies and issues licences when the copyright owner cannot be located.

Responsibilities

The responsibilities of the Board under the *Copyright Act* are to:

- certify tariffs for
  - the public performance of the communication to the public by telecommunication of musical works and sound recordings;
  - the doing of any protected act mentioned in sections 3, 15, 18 and 21 of the *Act*;
  - the retransmission of distant television and radio signals or the reproduction and public performance by educational institutions, of radio or television news or news commentary programs and all other programs, for educational or training purposes.
- set levies for the private copying of recorded musical works;
- set royalties payable by a user to a collective society, when there is disagreement on the royalties or on the related terms and conditions;
- rule on applications for non-exclusive licences to use published works, fixed performances, published sound recordings and fixed communication signals, when the copyright owner cannot be located;
- examine agreements made between a collective society and a user which have been filed with the Board by either party, where the Commissioner of Competition considers that the agreement is contrary to the public interest;
- receive such agreements with collective societies that are filed with it by any party to those agreements within 15 days of their conclusion;
- determine the compensation to be paid by a copyright owner to a person to stop her from performing formerly unprotected acts in countries that later join the *Berne Convention*, the *Universal Convention* or the *Agreement establishing the World Trade Organization*; and,
- conduct studies with respect to the exercise of its powers as requested by the Minister of Industry.

Strategic Outcome and Program Alignment Architecture

1. **Strategic Outcome:** Fair decision-making to provide proper incentives for the creation and use of copyrighted works.
   1.1 Program: Copyright Tariff Setting and Issuance of Licences

Internal Services

Organizational Priorities

Priority: Ensure timely and fair processes and decisions.

Description

The requirement to have timely decisions is expressly stated in the *Act*: the Board is to certify and publish tariffs "as soon as is practicable." The requirement to have fair processes and decisions is implicit: the *Act* gives the Board the powers, rights and privileges of a superior court; as such, the Board is required to follow the principles of natural justice which, taken together, ensure both fair processes and fair outcomes.

The rationale underlying this priority is to minimize administrative costs to Canadians from the setting of tariffs and to streamline the process in the face of increasing complexities in hearing subject matter, thus increasing regulatory efficiency. To the extent that this also leads to fairer decision-making, the overall innovation capability of parties affected by the copyright tariff process will be improved.

Priority Type

Ongoing

Key Supporting Initiatives

Planned Initiatives	Start Date	End Date	Link to Department's Program Alignment Architecture
- Ensure that participation costs in the hearing process are kept as low as possible, thus encouraging participation of the parties and streamlining the process.	Ongoing	Ongoing	Copyright Tariff Setting and Issuance of Licences
- Provide appropriate guidance, information and analysis to the participants in order to facilitate the examination process and to foster greater participants' satisfaction.	Ongoing	Ongoing	

- Engage in pre-hearing consultations and information gathering, and conduct well-organized proceedings which address key issues facing copyright-related industries.	Ongoing	Ongoing	
- Informally survey hearing participants, with follow-up examination and determination of alternative procedural practices to improve the efficiency of the regulatory process.	Ongoing	Ongoing	
- Examine, for each process, how to structure and sequence witnesses and hearing stages so as to eliminate duplication and maximize time spent on relevant issues.	Ongoing	Ongoing	
- The Board established a Working Committee on its Operations, Procedures and Processes, comprised of key stakeholders, to examine possible improvements to the Board's current practices and procedures, with a view to reducing uncertainty and streamlining the processes while safeguarding the fairness of the process. In December, 2014, the committee finalized a discussion paper dealing with the identification and disclosure of issues to be addressed during a tariff proceeding and with the interrogatory process. The paper was released for public consultations in February, 2015. After reviewing the comments and responses received, the Board will make public the changes it will implement.	February 2015	March 2017	
- The Committee is continuing its work, and is currently developing a draft issues paper on the issue of the confidential treatment of the information. This paper will be released for public consultations in fiscal year 2016-17. In addition, the committee has been asked to establish its next set of priorities, using its terms of reference as starting point. The choice of priorities is expected to account for concerns raised in the comments received in March, 2015 about the need to focus on reforms that will bring about true efficiencies: case management; scheduling; dealing with tariffs that are unopposed or agreed upon; the amount of time it takes for a proceeding to begin; and requiring a statement of issues prior to filing interrogatories.	March 2016	March 2017	

Priority: Advance the analytical framework for decisions and the regulatory processes for tariff-setting.

Description

Among the most significant risks which the Board faces in achieving its strategic outcomes are the potentially disruptive impact of new technologies, in particular on how copyright material is utilized, distributed and monitored. Fair and equitable decisions critically depend on the

Board's ability to identify, understand and assess the industry issues before they adversely impact existing copyright regimes.

The Board is required, under the *Act*, to give reasons for its decisions. In keeping with the modern principles of judicial review, the Federal Court of Appeal typically defers to the Board's expert understanding of the facts before it. The Board can only maintain this deference by constantly advancing its analytical frameworks.

By its involvement in international activities as they relate to copyright tariff setting in other parts of the world, the Board ensures that its own tariff-setting processes and decisions are cognizant of developments outside of Canada.

Priority Type

Ongoing

Key Supporting Initiatives

Planned Initiatives	Start Date	End Date	Link to Department's Program Alignment Architecture
- Systematic monitoring of the relevant journals, other publications and websites, and attendance to industry seminars and conferences.	Ongoing	Ongoing	Copyright Tariff Setting and Issuance of Licences
- Knowledge of the international experience is also a key tool in addressing the challenges of changing technology and the impact of global events. By comparing experiences across different countries, the Board expects to gain early warning of significant developments and their likely impacts on the Canadian situation.	Ongoing	Ongoing	

Risk Analysis

Key Risks

Risk	Risk Response Strategy	Link to Program Alignment Architecture
Technology risk	• Systematically monitor relevant publications and web sites, and to attend industry seminars and conferences. • No modifications to the risk mitigation strategies.	Fair decision-making to provide proper incentives for the creation and use of copyrighted works.
Reversal risk	• Issue fair and equitable decisions. • No modifications to the risk mitigation strategies.	
HR risk	• Run well-organized job competitions, designed to target a significant share of the pool of potential candidates. • Create a stimulating working environment conducive to a high retention rate among its employees. • No modifications to the risk mitigation strategies.	

Among the most significant risks which the Board faces in achieving its strategic outcomes is the potentially disruptive impact of new technologies (i.e., in terms of how copyright material is utilized, distributed and monitored). The Board's approach to managing the technology risk is to systematically monitor relevant journals, other publications and web sites, and to attend industry seminars and conferences, as described before in this report.

The decisions the Board makes are constrained in several respects. These constraints come from sources external to the Board: the law, regulations and judicial pronouncements. Others are self-imposed, in the form of guiding principles that can be found in the Board's decisions: for instance, the coherence between the various tariffs, their ease of administration and the need for some stability in the tariffs.

Court decisions also provide a large part of the framework within which the Board operates. Most decisions focus on issues of procedure, or apply the general principles of administrative decision-making to the specific circumstances of the Board. However, the courts have also set out several substantive principles for the Board to follow or that determine the ambit of the Board's mandate or discretion.

A smaller risk, which the Board faces in achieving its strategic outcome, is reversal risk. While decisions of the Board are not appealable, they are subject to judicial review. The ability to schedule a number of cases in a year could be impaired if a case from a previous year were reversed on judicial review. The Board's principal strategy to mitigate this risk is issuing fair and equitable decisions.

There is always a risk of not being able to hire or retain the staff with the necessary technical expertise to achieve required results. To mitigate this risk, the Board runs well-organized job

competitions, designed to target a significant share of the pool of potential candidates. The Board also takes measures to encourage a large number of applications. The Board also works at creating a stimulating working environment conducive to a high retention rate among its employees.

Planned Expenditures

Budgetary Financial Resources (dollars)

2016-17 Main Estimates	2016-17 Planned Spending	2017-18 Planned Spending	2018-19 Planned Spending
3,111,724	3,111,724	3,111,724	3,111,724

Human Resources (Full-Time Equivalents [FTEs])

2016-17	2017-18	2018-19
18	18	18

Budgetary Planning Summary for Strategic Outcome(s) and Program(s) (dollars)

Strategic Outcome(s), Program(s) and Internal Services	2013-14 Expenditures	2014-15 Expenditures	2015-16 Forecast Spending	2016-17 Main Estimates	2016-17 Planned Spending	2017-18 Planned Spending	2018-19 Planned Spending
Strategic Outcome 1: Fair decision-making to provide proper incentives for the creation and use of copyrighted works							
Copyright Tariff Setting and Issuance of Licences	2,251,535	2,486,300	2,632,671	2,520,496	2,520,496	2,520,496	2,520,496
Subtotal	2,251,535	2,486,300	2,632,671	2,520,496	2,520,496	2,520,496	2,520,496
Internal Services Subtotal	528,137	583,206	617,540	591,228	591,228	591,228	591,228
Total	2,779,672	3,069,506	3,250,211	3,111,724	3,111,724	3,111,724	3,111,724

Alignment of Spending With the Whole-of-Government Framework

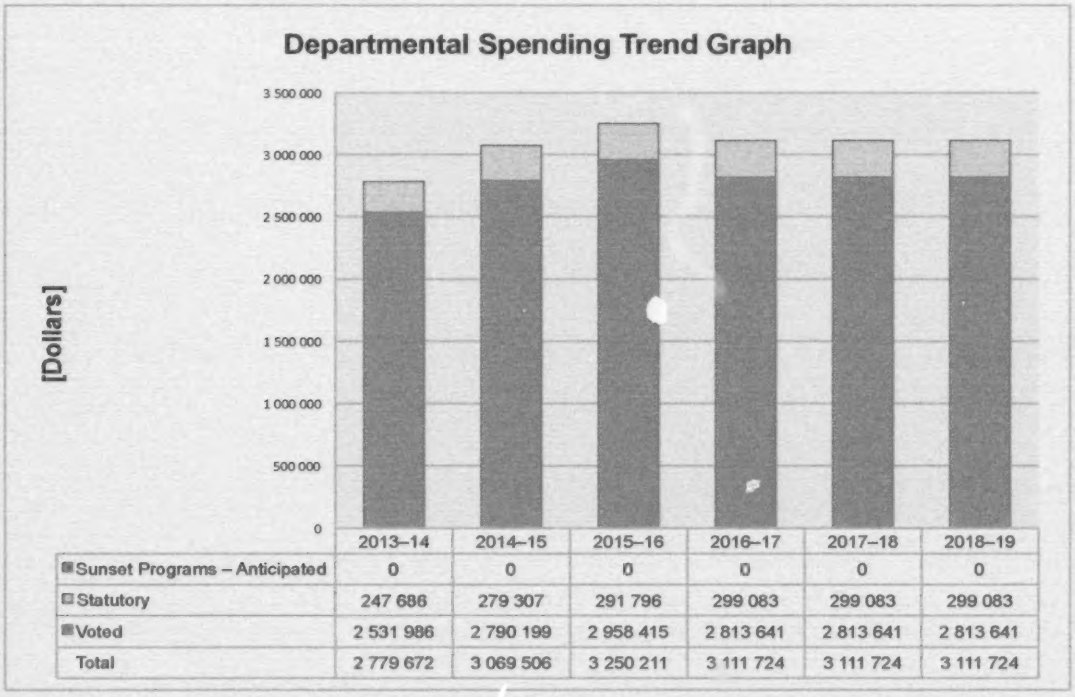
Alignment of 2016-17 Planned Spending With the Whole-of-Government Framework[vi] (dollars)

Strategic Outcome	Program	Spending Area	Government of Canada Outcome	2016-17 Planned Spending
Fair decision-making to provide proper incentives for the creation and use of copyrighted works	Copyright Tariff Setting and Issuance of Licences	Economic Affairs	An innovative and knowledge-based economy	2,520,496

Total Spending by Spending Area (dollars)

Spending Area	Total Planned Spending
Economic affairs	2,520,496
Social affairs	-
International affairs	-
Government affairs	-

Departmental Spending Trend



	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19
Sunset Programs – Anticipated	0	0	0	0	0	0
Statutory	247 686	279 307	291 796	299 083	299 083	299 083
Voted	2 531 986	2 790 199	2 958 415	2 813 641	2 813 641	2 813 641
Total	2 779 672	3 069 506	3 250 211	3 111 724	3 111 724	3 111 724

Actual spending increased from $2.8 million in 2013-14 to $3.1 million in 2014-15, a reflection of some vacant positions at the Board that have been staffed. Forecast spending for 2015-16 increase at 3.25 million, a reflection of higher spending for the Board's audiovisual equipment. Over the next three fiscal years, total planned spending are about $3.1 million.

Estimates by Vote

For information on the Copyright Board's organizational appropriations, consult the *2016-17 Main Estimates*[vii] on the Treasury Board of Canada Secretariat website.

Section II: Analysis of Programs by Strategic Outcome

Strategic Outcome:

The Board's strategic outcome is fair decision-making to provide proper incentives for the creation and uses of copyrighted works.

Program 1.1: Copyright Tariff Setting and Issuance of Licences

Description

The statutory mandate of the Board is to establish tariffs to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective-administration society, and to issue licences when the copyright owner cannot be located. This program activity allows the Board to renders decisions and issue licences such that the Board fulfills its mandate.

Budgetary Financial Resources (dollars)

2016-17 Main Estimates	2016-17 Planned Spending	2017-18 Planned Spending	2018-19 Planned Spending
2,520,496	2,520,496	2,520,496	2,520,496

Human Resources (Full-Time Equivalents [FTEs])

2016-17	2017-18	2018-19
15	15	15

Performance Measurement

Expected Results	Performance Indicators	Targets	Date to Be Achieved
Fair decision-making to provide proper incentives for the creation and uses of copyrighted works	1. Percentage of tariff decisions published within 12 months	70%	March 31, 2017
	2. Percentage of licences issued within 45 days	70%	March 31, 2017
	3. Level of satisfaction of stakeholders	70%	March 31, 2017

Planning Highlights

To ensure fair decision-making, the Board periodically measures stakeholders' satisfaction. A formal survey was conducted electronically. The survey assessed the degree of satisfaction of the Board's stakeholders with regard to the services it provides as part of a process leading to the issuance of a licence when the copyright owner cannot be located. An initial satisfaction rate target of 70 per cent was set and a satisfaction rate of 72 per cent was obtained. Based on the comments received through the survey, the Board is currently reviewing some of its public information tools so as to increase the amount and relevance of information available to those who request licences.

In addition, in view of assessing the degree of satisfaction in respect of the process leading to the certification of a tariff, the Board held consultation meetings with its key stakeholders. These consultations led to the establishment of a Working Committee whose mandate is to propose possible changes to procedures that may lead to more efficient and less costly Board proceedings and propose improvements to other aspects of Board processes and operations that may enhance the quality of the Board's services to collective societies, copyright users and the public in general. The Working Committee is expected to continue its work during fiscal year 2015-16.

Improving the efficiency of the regulatory process involves continual refinements in scheduling of witnesses, establishing and communicating the parameters of the hearing to participants, consulting with key stakeholders and developing codes of hearing practice and related guidelines for the conduct of hearings. By improving the efficiency of the tariff hearing pro cess, this activity is expected to contribute to the objective of reducing the regulatory burden.

Delays in providing written decisions to Canadian copyright industry stakeholders can cause uncertainty, thus impacting on the Board's capacity to provide incentives for the creation and use of copyrighted works. Therefore, we will gather data on the number of months between the date when a particular tariff file is closed, and the date of the corresponding decision.

With respect to the number of months before a tariff decision is issued, the Board believes that a target of 12 months should be set for the next fiscal year, with a complying percentage of 70 per cent. Considering that the Board's resources have been increased only recently, it would be unrealistic to set a shorter target. However, over the next few years, while currently vacant positions are being gradually filled, the Board will re-examine the possibility of reducing the 12-month target.

In addition, pursuant to section 77 of the *Act*, the Board may grant licences that authorize the use of published works, fixed performances, published sound recordings and fixed communication signals if the copyright owner cannot be located. The Board's objective with respect to this activity is to issue licences in a timely manner. Therefore, we will also gather data on the number of months between the date when a particular licence file is closed, and the date of issuance of the licence.

With respect to the number of months before a licence is issued, the Board believes that a delay of 45 days between the file completion date and the issuance of the licence is appropriate, and that this delay should be met in at least 70 per cent of the files.

Internal Services

Description

Internal Services are groups of related activities and resources that are administered to support the needs of programs and other corporate obligations of an organization. Internal services include only those activities and resources that apply across an organization, and not those provided to a specific program. The groups of activities are Management and Oversight Services; Communications Services; Legal Services; Human Resources Management Services; Financial Management Services; Information Management Services; Information Technology Services; Real Property Services; Materiel Services; and Acquisition Services.

Budgetary Financial Resources (dollars)

2016-17 Main Estimates	2016-17 Planned Spending	2017-18 Planned Spending	2018-19 Planned Spending
591,228	591,228	591,228	591,228

Human Resources (FTEs)

2016-17	2017-18	2018-19
3	3	3

Planning Highlights

The Board receives timely support from internal services, namely: finance; human resources; communications; information management and information technology. This activity contributes to the creation of an environment that will allow the Board to fulfill its mandate and realize its objective.

Section III: Supplementary Information

Future-Oriented Statement of Operations

The future-oriented condensed statement of operations provides a general overview of the Board's operations. The forecast of financial information on expenses and revenues is prepared on an accrual accounting basis to strengthen accountability and to improve transparency and financial management.

Because the future-oriented condensed statement of operations is prepared on an accrual accounting basis, and the forecast and planned spending amounts presented in other sections of the Report on Plans and Priorities are prepared on an expenditure basis, amounts differ.

A more detailed future-oriented statement of operations and associated notes, including a reconciliation of the net cost of operations to the requested authorities, can be found on the Board's website[viii].

Future-Oriented Condensed Statement of Operations
For the Year Ended March 31
(dollars)

Financial Information	2015-16 Estimated Results	2016-17 Planned Results	Difference
Total expenses	3,676,800	3,544,036	(132,764)
Total revenues	-	-	-
Net cost of operations	3,676,800	3,544,036	(132,764)

The estimated net cost of operations for 2015-16 is higher than the planned net cost of operations for 2016-17, mainly as a reflection of the addition of the carry forward to the 2015-16 results.

Tax Expenditures and Evaluations

The tax system can be used to achieve public policy objectives through the application of special measures such as low tax rates, exemptions, deductions, deferrals and credits. The Department of Finance Canada publishes cost estimates and projections for these measures annually in the *Tax Expenditures and Evaluations*[ix] publication. The tax measures presented in the *Tax Expenditures and Evaluations* publication are the responsibility of the Minister of Finance.

Section IV: Organizational Contact Information

Copyright Board of Canada
Suite 800 - 56 Sparks Street
Ottawa, Ontario K1A 0C9
Telephone: 613.952.8621
E-mail: secretariat@cb-cda.gc.ca

Appendix: Definitions

Appropriation: Any authority of Parliament to pay money out of the Consolidated Revenue Fund.

budgetary expenditures: Operating and capital expenditures; transfer payments to other levels of government, organizations or individuals; and payments to Crown corporations.

Departmental Performance Report: Reports on an appropriated organization's actual accomplishments against the plans, priorities and expected results set out in the corresponding Reports on Plans and Priorities. These reports are tabled in Parliament in the fall.

full-time equivalent: A measure of the extent to which an employee represents a full person-year charge against a departmental budget. Full-time equivalents are calculated as a ratio of assigned hours of work to scheduled hours of work. Scheduled hours of work are set out in collective agreements.

Government of Canada outcomes: A set of 16 high-level objectives defined for the government as a whole, grouped in four spending areas: economic affairs, social affairs, international affairs and government affairs.

Management, Resources and Results Structure: A comprehensive framework that consists of an organization's inventory of programs, resources, results, performance indicators and governance information. Programs and results are depicted in their hierarchical relationship to each other and to the Strategic Outcome(s) to which they contribute. The Management, Resources and Results Structure is developed from the Program Alignment Architecture.

non-budgetary expenditures: Net outlays and receipts related to loans, investments and advances, which change the composition of the financial assets of the Government of Canada.

performance: What an organization did with its resources to achieve its results, how well those results compare to what the organization intended to achieve, and how well lessons learned have been identified.

performance indicator: A qualitative or quantitative means of measuring an output or outcome, with the intention of gauging the performance of an organization, program, policy or initiative respecting expected results.

performance reporting: The process of communicating evidence-based performance information. Performance reporting supports decision making, accountability and transparency.

planned spending: For Reports on Plans and Priorities (RPPs) and Departmental Performance Reports (DPRs), planned spending refers to those amounts that receive Treasury Board approval by February 1. Therefore, planned spending may include amounts incremental to planned expenditures presented in the Main Estimates.

A department is expected to be aware of the authorities that it has sought and received. The determination of planned spending is a departmental responsibility, and departments must be able to defend the expenditure and accrual numbers presented in their RPPs and DPRs.

plans: The articulation of strategic choices, which provides information on how an organization intends to achieve its priorities and associated results. Generally a plan will explain the logic behind the strategies chosen and tend to focus on actions that lead up to the expected result.

priorities: Plans or projects that an organization has chosen to focus and report on during the planning period. Priorities represent the things that are most important or what must be done first to support the achievement of the desired Strategic Outcome(s).

program: A group of related resource inputs and activities that are managed to meet specific needs and to achieve intended results and that are treated as a budgetary unit.

Program Alignment Architecture: A structured inventory of an organization's programs depicting the hierarchical relationship between programs and the Strategic Outcome(s) to which they contribute.

Report on Plans and Priorities: Provides information on the plans and expected performance of appropriated organizations over a three-year period. These reports are tabled in Parliament each spring.

results: An external consequence attributed, in part, to an organization, policy, program or initiative. Results are not within the control of a single organization, policy, program or initiative; instead they are within the area of the organization's influence.

statutory expenditures: Expenditures that Parliament has approved through legislation other than appropriation acts. The legislation sets out the purpose of the expenditures and the terms and conditions under which they may be made.

Strategic Outcome: A long-term and enduring benefit to Canadians that is linked to the organization's mandate, vision and core functions.

sunset program: A time-limited program that does not have an ongoing funding and policy authority. When the program is set to expire, a decision must be made whether to continue the program. In the case of a renewal, the decision specifies the scope, funding level and duration.

target: A measurable performance or success level that an organization, program or initiative plans to achieve within a specified time period. Targets can be either quantitative or qualitative.

voted expenditures: Expenditures that Parliament approves annually through an Appropriation Act. The Vote wording becomes the governing conditions under which these expenditures may be made.

whole-of-government framework: Maps the financial contributions of federal organizations receiving appropriations by aligning their Programs to a set of 16 government-wide, high-level outcome areas, grouped under four spending areas.

Endnotes

[i] Ministerial Mandate Letters, http://pm.gc.ca/eng/ministerial-mandate-letters

[ii] Minister of Innovation, Science and Economic Development Mandate Letter, http://pm.gc.ca/eng/minister-innovation-science-and-economic-development-mandate-letter

[iii] Minister of Science Mandate Letter, http://pm.gc.ca/eng/minister-science-mandate-letter

[iv] Minister of Small Business and Tourism Mandate Letter, http://pm.gc.ca/eng/minister-small-business-and-tourism-mandate-letter

[v] *Copyright Act:* http://laws-lois.justice.gc.ca/eng/acts/C-42/index.html

[vi] Whole-of-government framework, http://www.tbs-sct.gc.ca/ppg-cpr/frame-cadre-eng.aspx

[vii] *2016-17 Main Estimates*, http://www.tbs-sct.gc.ca/hgw-cgf/finances/pgs-pdg/gepme-pdgbpd/index-eng.asp

[viii] Copyright Board website, http://www.cb-cda.gc.ca

[ix] *Tax Expenditures and Evaluations* publication, http://www.fin.gc.ca/purl/taxexp-eng.asp